



STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114-0601

MICHAEL O. LEAVITT
GOVERNOR

OLENE S. WALKER
LEUTENANT GOVERNOR

Doc *File*
PFB
and
Roads
RS2477

June 3, 1999

Linda Colville
Acting State Director
Bureau of Land Management
324 S. State Street
P.O. Box 45155
Salt Lake City, UT 84145-0155

Dear Ms. Colville:

Recently, Glenn A. Carpenter, head of the Salt Lake District Office, stated to the press that neither the State of Utah nor Tooele County had ever requested a right-of-way along various roads in Tooele County, Utah, and that therefore, these roads are "federal" roads not subject to any state administrative control. The quote was part of an article on the proposal by Private Fuels Storage to store high level nuclear waste in Tooele County.

To set the record straight, no application is or has ever been required. These rights-of-way were obtained from the federal government through the application of Revised Statute 2477, which, prior to its repeal in 1976, provided that "[t]he right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted". Duly promulgated regulations of the Department of the Interior provided from 1939 to 1976 that "[t]his grant becomes effective upon the construction or establishing of highways, in accordance with the state laws, over public lands not reserved for public uses. No application should be filed under this act, as no action on the part of the Federal Government is necessary". Transfer of the rights-of-way from the county to the state is entirely a matter of state law, and was accomplished through state administrative and legislative action. Therefore, the state is now the holder of the rights-of-way for the roads in question, owning all the rights and benefits guaranteed by the grant from the federal government.

The State of Utah is fully aware that the grant of R.S. 2477 rights-of-way is under legal challenge within various counties in the state. Please be advised that the state will defend its underlying title to these rights-of-way through all necessary means. Of more immediate concern, however, the state will vigorously defend any incursions or encroachments upon the rights and responsibilities granted to it, and recognized by the federal courts, from any federally or privately proposed alterations to the rights-of-way, including those from the rail spur sponsored by Private Fuels Storage. Legal challenges to R.S. 2477 rights-of-way elsewhere in the state do not give the

Linda Colville

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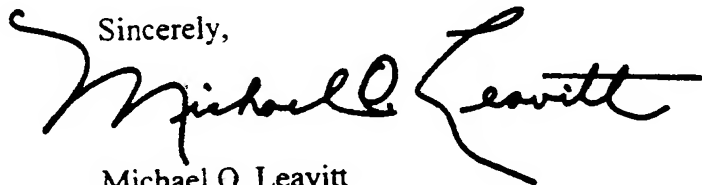
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Bureau of Land Management unilateral authority to simply declare these roads "federal" as part of a process to amend the Pony Express Resource Management Plan, and then to further allow a third party to physically or legally change these rights-of-way. Neither the proposal of Private Fuel Storage, significant as it may be, nor any other, authorizes the BLM to trample or ignore property rights held by others. The review processes currently underway for the proposed rail spur, and any related actions, must recognize that the state has a valid interest in these rights-of-way, and, as such, will not only defend its interest, but must be considered a partner in any decisions concerning changes to them.

Further, please be advised that the state law requiring the permission of the state for any crossing by railroads over highways applies to any "public highway", not just state or county owned roads. This requirement must be considered by the BLM in all of its deliberative processes related to the Private Fuels Storage proposal.

Thank you for your consideration in this matter. The state is willing to discuss these issues with you; please contact Dianne Nielson (536-4404) or John Harja (538-1559) of my staff if you wish to do so.

Sincerely,

A handwritten signature in black ink, reading "Michael O. Leavitt". The signature is fluid and cursive, with a large, sweeping "L" for the last name.

Michael O. Leavitt
Governor

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

PRIVATE FUEL STORAGE, LLC
(Independent Spent Fuel
Storage Installation)

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Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

July 1, 1999

STATE OF UTAH'S RESPONSE TO APPLICANT'S MOTION
FOR SUMMARY DISPOSITION OF CONTENTIONS
UTAH SECURITY-A AND SECURITY-B AND PARTIAL
SUMMARY DISPOSITION OF CONTENTION UTAH SECURITY-C

On June 11, the Applicant filed a Motion for Summary Disposition on all of Utah Security-A and Security-B and for Partial Summary Disposition on Utah Security-C. PFS bases its Motion entirely on the proposition that the Tooele County Commission has passed the necessary resolution approving Tooele County's entry into a Cooperative Law Enforcement Agreement ("CLEA" or "Agreement") among Tooele County, the Bureau of Indian Affairs and the Skull Valley Band of Goshute Indians. The County Commission's Resolution only approves the County's entry into the Agreement; it does not define the scope or applicability of the Agreement.

The basis for the Board admitting Utah Security-A, Security-B and part of Security-C was whether "the purported failure of Tooele County to approve properly a June 1997 cooperative agreement that provides the Tooele County Sheriff's office with law enforcement authority on the Skull Valley Band reservation precludes the

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county sheriff's office from fulfilling its designated role as the LLEA [local law enforcement agency] for the PFS facility." Memorandum and Order (Granting Motion for reconsideration) dated August 5, 1998 at 14.

The Board also admitted Security-C on the following basis: "PFS has not adequately described the estimated response times for the Tooele County sheriff's office as the principal LLEA relied upon for security assistance at the PFS facility." Id. at 14. This portion of Security-C is not subject to the Applicant's June 11 Motion for Partial Summary Disposition.

It is important to note what is not contained in the Applicant's Motion. The fact that the Tooele County Commission may have approved entry into an CLEA agreement does not determine whether the Tooele County Sheriff has any obligation to respond to incidents at the proposed PFS Skull Valley storage facility. Nor does the resolution determine the scope, applicability or response capability of the Tooele County Sheriff as it relates to the proposed PFS facility. There is nothing in the record to support reliance by PFS on law enforcement assistance from the Tooele County Sheriff. To the contrary, a letter from the Tooele County Attorney, Douglas J. Ahlstrom, to Dianne R. Nielson, dated December 2, 1998, opined that "at the time the CLEA was signed there was no discussion or contemplation that Private Fuel Storage would be part of the agreement. Moreover, the county has not yet entered into any agreement that has any bearing on locating the PFS storage facility on the reservation."

See Exhibit 2 to State of Utah's Motion to Amend Security Contentions dated December 17, 1998. The State is unaware of any agreement between Tooele County and PFS that obligates the County to provide law enforcement assistance to the PFS facility, which is located on an Indian reservation.

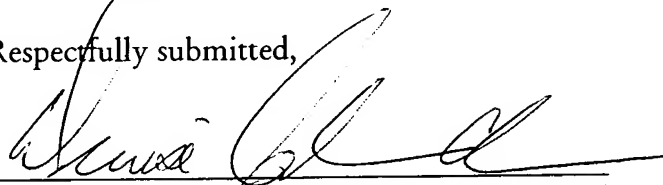
The State notes that the Staff has refused to recognize the very real potential that the Tooele County Sheriff will not provide law enforce assistance to the proposed PFS facility. The State is dismayed that NRC would place form over substance and pronounce from its confines in Washington D.C. that the citizens of the State of Utah will be protected because of the Staff's interpretation of a contract, which interpretation is diametrically opposed to that of one of the contracting parties, *i.e.* the Tooele County Attorney. If PFS had chosen to locate on non-Indian reservation lands, the issue of law enforcement coverage would not be in dispute. While, PFS 's choice of location may have some benefits to it in terms of zoning, lack of local regulation, and the like, it also has some drawbacks; and one of those drawbacks is that the State and local government are not obligated to provide law enforcement on an Indian reservation. The Staff can easily rectify the concerns raised by the State by insisting on a written agreement or understanding between Tooele County and PFS, that proves that PFS has "documented liaison with a LLEA" as required by 10 CFR § 73.51(d).

The State submits that to the extent that the Board grants the Applicant's

Motion for Summary Disposition on Security-A, Security-B, and part of Security-C, it has no bearing on the response times for the Tooele County Sheriff's office to provide security assistance at the PFS facility. Nor will action by the Board on this Motion mean that the Tooele County Sheriff's office will, in fact, act as the principal LLEA to the PFS facility.

DATED this 1st day of July, 1999.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Denise Chancellor", written over a horizontal line.

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Fred G Nelson, Assistant Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S RESPONSE TO
APPLICANT'S MOTION FOR SUMMARY DISPOSITION OF CONTENTIONS
UTAH SECURITY-A AND SECURITY-B AND PARTIAL SUMMARY
DISPOSITION OF CONTENTION UTAH SECURITY-C was served on the
persons listed below by electronic mail (unless otherwise noted) with conforming
copies by United States mail first class, this 1st day of July, 1999:

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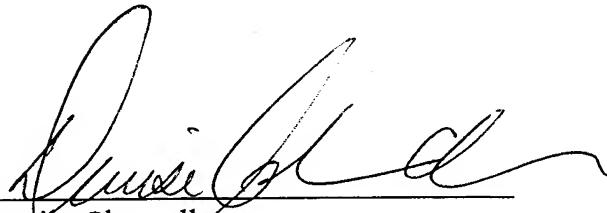
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A handwritten signature in black ink, appearing to read "Denise Chancellor", written over a horizontal line.

Denise Chancellor
Assistant Attorney General
State of Utah